

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOHN PEARL SMITH, II,

Defendant.

Case No. 3:16-cr-00086-SLG-1

**ORDER REGARDING MOTION TO EXCLUDE RULE 404(B) EVIDENCE**

Before the Court at Docket 1124 is defendant John Pearl Smith, II's sealed Motion to Exclude Any Fed. Rule Evid. 404(b) Evidence. The government did not file a response.

The Court previously ordered that the government's Rule 404(b) notice was due on August 23, 2021.<sup>1</sup> To date, the government has not filed a Rule 404(b) notice. Mr. Smith filed the current motion when trial was then imminent and seeks "to exclude any of his 'prior bad acts'" and to have the Court "forbid the Government from now seeking to provide a tardy notice."<sup>2</sup>

Mr. Smith is correct that the deadline for the government to file a Rule 404(b) notice has passed. However, the trial in this case is no longer "imminent," as it

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<sup>1</sup> Docket 1105 at 2 (Fifth Amended Scheduling Order); *see also* Fed. R. Evid. 404(b)(3) (requiring the government to give notice of proposed Rule 404(b) evidence).

<sup>2</sup> Docket 1124 at 1, 2 (under seal).

was when the instant motion was filed; there is currently no trial date scheduled. Rule 404(b)(3) requires sufficient notice from the government “so that the defendant has a fair opportunity to meet” the Rule 404(b) evidence. Because no trial is scheduled, the Court will not prohibit the government from filing a Rule 404(b) notice, but if the government does file a Rule 404(b) notice, it must show good cause for why it did not do so by the August 23, 2021 deadline. The Court will not categorically prohibit evidence of “any of [Mr. Smith’s] prior bad acts” at this time because the record before the Court does not sufficiently indicate what those acts are or whether the acts qualify as Rule 404(b) evidence.

In light of the foregoing, IT IS ORDERED that the motion at Docket 1124 is DENIED.

DATED this 18th day of October, 2021, at Anchorage, Alaska.

/s/ Sharon L. Gleason  
UNITED STATES DISTRICT JUDGE